COM/CAP/jt2

PROPOSED DECISION

Agenda ID #14683 Quasi-legislative

Decision	

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Conduct a Comprehensive	Rulemaking 13-01-010
Examination of the California Teleconnect Fund.	(Filed January 24, 2013)

DECISION GRANTING COMPENSATION TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTION TO DECISION 15-07-007

Intervenor: The Utility Reform Network (TURN)	For contribution to Decision (D.) 15-07-007
Claimed: \$118,719.17	Awarded: \$97,218.17 (18.11% reduction)
Assigned Commissioner: Carla J. Peterman	Assigned ALJ: Sophia J. Park

PART I: PROCEDURAL ISSUES

A. Brief description of Decision:	This decision resolves Phase 1 and 2 rulemaking issues for	
	the California Teleconnect Fund (CTF) program by adopting	
	restated program goals and a number of program design	
	measures.	

B. Intervenor must satisfy intervenor compensation requirements set forth in Pub. Util. Code §§ 1801-1812:

	Intervenor	CPUC Verified	
Timely filing of notice of intent to clai	Timely filing of notice of intent to claim compensation (NOI) (§ 1804(a)):		
1. Date of Prehearing Conference (PHC):	June 19, 2013	Verified.	
2. Other specified date for NOI:			
3. Date NOI filed:	April 17, 2013 (see Comment #1 below)	Verified.	
4. Was the NOI timely filed?		Yes.	
Showing of customer or custom	er-related status (§ 1802(l	b)):	
5. Based on ALJ ruling issued in proceeding number:	A.12-04-015	Verified.	
6. Date of ALJ ruling:	July 20, 2012	Verified.	
7. Based on another CPUC determination (specify):			

155202167 - 1 -

8. Has the Intervenor demonstrated customer or customer-related status?		Yes.
Showing of "significant financial hardship" (§ 1802(g)):		
9. Based on ALJ ruling issued in proceeding number:	R.11-11-008 (see Comment #2 below)	A.12-04-015
10. Date of ALJ ruling:	Jan. 3, 2012	July 20, 2012
11. Based on another CPUC determination (specify):		
12. Has the Intervenor demonstrated significant financial hardship?		Yes.
Timely request for compensation (§ 1804(c)):		
13. Identify Final Decision:	D.15-07-007	D.15-07-007
14. Date of issuance of Final Order or Decision:	July 27, 2015	July 27, 2015
15. File date of compensation request:	Sept. 23, 2015	September 23, 2015
16. Was the request for compensation timely?		Yes.

C. Additional Comments on Part I:

#	Intervenor's Comment(s)	CPUC Discussion
1	The Order Instituting Rulemaking (OIR) indicated that NOIs should be filed in accordance with Rule 17.1 within 30 days of the filing of reply comments or of the prehearing conference, whichever is later. No prehearing conference has been held. TURN filed reply comments, per the OIR schedule, on 3/18/13. The NOI was filed on 4/17/13 and hence is timely filed. See OIR in R.13-01-010 issued 1/31/13, p. 15.	Rule 17.1 provides that in a proceeding with a prehearing conference (PHC), the Notice of Intent (NOI) should be filed 30 days after the PHC. If it is preliminarily determined that a hearing is not needed, the NOI must be filed within 30 days after responsive pleadings (e.g., protests, responses, answers, or comments). If a PHC is later held, then the NOI can be filed within 30 days of the PHC, as provided in Rule 17.1(a)(1). As a PHC was held on 6/19/13, the NOI is timely filed.
2	TURN was also recently found to have met its showing of "significant financial hardship" in an ALJ ruling issued on Sept. 5, 2014 in R.14-05-001.	The ruling cited by TURN for support of its claim of significant financial hardship is outside of the one year window for the Commission's rebuttable presumption of hardship. Instead, the Commission bases today's finding of significant financial hardship on the ruling found in A.12-04-015, which issued on July 20, 2012.

PART II: SUBSTANTIAL CONTRIBUTION

A. Did the Intervenor substantially contribute to the final decision (see § 1802(i), § 1803(a), and D.98-04-059).

Intervenor's Claimed Contribution(s)	Specific References to Intervenor's Claimed Contribution(s)	CPUC Discussion
1.Restatement of Goals of the CTF Program		Accepted.
Initially, the OIR intended to first develop and adopt new restated goals for the program and then engage in design reform. While TURN supported a restatement of the goals, TURN argued that the approach proposed in the OIR was counterproductive and that a better approach would be to engage in a full assessment of the CTF program before new or revised goals are established. In that way the Commission could make use of actual data as an input into any policy goal modifications.	TURN Comments on App. A of Joint Assigned Commissioner and ALJ's Ruling (May 30, 2013), pp. 1-2 TURN Reply Comments on App. A of Joint Assigned Commissioner and ALJ's Ruling (June 7, 2013), pp. 1-3.	
The Commission ultimately agreed with TURN's logic determining that "consideration of the restatement of goals was sufficiently intertwined with program design reform issues such that the Phase 1 and Phase 2 issues should be considered together."	D.15-07-007, pp.10-11.	
TURN also raised serious problems with the goals proposed by staff. Among the issues TURN raised were: CTF should not be used to achieve public safety	TURN Comments (March 4, 2013), pp.	

goals; CTF was not intended to be fund deployment of infrastructure; the restated goals should not use the term "anchor institutions" since that concept was not reflected in the statute creating CTF; the use of the term 'economically" to describe "affordability"; the inclusion of "public universities" represented an expansion of entities eligible for CTF; and the use of several different terms ("advanced telecommunication technology", "state-of-the – art technologies", and "advanced telecommunications services") without defining any of them. The Commission agreed with many of the points TURN made and revised the goals accordingly.	TURN Comments on App. A of Joint Assigned Commissioner and ALJ's Ruling (May 30, 2013), pp. 2-5. TURN Reply Comments on App. A of Joint Assigned Commissioner and ALJ's Ruling (June 7, 2013), pp. 3. Joint Comments of the Center for Accessible Technology, the Greenlining Institute, and TURN on Phase 1Issues, Phase 2 Issues and Party Proposals (Oct. 9, 2014) ("Joint Consumers"), p. 1-5.	
	D.15-07-007, pp. 11-15; and Appendix A, p.1.	
2. Eligibility Requirements – Community-Based Organizations (CBOs) TURN was a leader in developing and presenting modifications to the eligibility requirements for CBOs. TURN strongly advocated that the CBO category should be preserved. In addition TURN presented alternatives to the	TURN Comments (March 4, 2013), pp. 4-7. TURN Reply Comments (March 18, 2013), pp. 2-4. TURN Comments on Staff Proposal (Feb. 14, 2014), pp. 6-1	Accepted.

staff proposals. In TURN's view, the Staff proposals for CBOs would significantly undermine the express reasons why CBOs were statutorily permitted to be CTF eligible in the first place. TURN's proposals for CBOs included: - Change the eligible revenue requirement from a \$50M cap to a \$5M cap. - Direct vs. indirect access – CBOs should be eligible for CTF even if they only provide clients indirect access to	TURN's Alternative to Staff's Revised Proposal (June 20, 2014), pp. 9-14. Joint Comments of the Center for Accessible Technology, the Greenlining Institute, and TURN on Phase 1 Issues, Phase 2 Issues and Party Proposals (Oct. 9, 2014) ("Joint Consumers"), pp. 6-8. Joint Consensus Recommendations and Discussion Summary Report (Sept. 9, 2014), pp. 11-12 (TURN was an active participant in formulating the consensus recommendations).	
internet functionality. TURN was the 1 st party to advocate for this approach.	recommendations).	
- Reject the Staff proposals that qualifying CBOs must serve a community located within a zip code with a household internet adoption rate of less than 72% and a CBO must serve a low income community within a zip code with a median income of less than 150% of the federal poverty level.		
- Create a new category for health care CBOs – TURN was the 1 st party to advocate for this.	D.15-07-007, pp. 25-37; and Appendix	
- Support for prohibiting CTF to be used by CBOs for purely administrative purposes.	A, pp. 2-3.	
The Commission adopted most of TURN's recommendations in D.15-07-007.		
3. Amount of Discount Staff had proposed that the		Accepted.

amount of discount available to CTF recipients should be changed from 50% to a fixed amount per download speed for a given geographic location (except for schools, libraries and the CA Telehealth Network). TURN opposed this proposed modification arguing that the objective of the CTF proceeding was not cost cutting for its own sake. TURN also argued that Staff presented no evidence that there were harms caused by the current methodology. In addition, TURN argued that a fixed price based on geographic location would be very difficult to administer. Finally, TURN contended that, especially for small CBOs, a fixed price set annually could lead to a shortfall for recipients if carriers raised rates within that year.	TURN Comments on Staff Proposal (Feb. 14, 2014), pp. 11-12. TURN's Alternative to Staff's Revised Proposal (June 20, 2014), pp. 6-8. Joint Consensus Recommendations and Discussion Summary Report (Sept. 9, 2014), pp. 7 and 12 (TURN was an active participant in formulating the consensus recommendations). Joint Comments of the Center for Accessible Technology, the Greenlining Institute, and TURN on Phase 1 Issues, Phase 2 Issues and Party Proposals (Oct. 9, 2014) ("Joint Consumers"), p. 9.	
In D. 15-07-007 the Commission agreed with TURN ruling that the existing 50% discount would be retained.	D.15-07-007, pp. 54-58, Conclusion of Law 31.	
4. Workshops		Accepted.
TURN was an active participant in all the workshops in this proceeding as well as an active participant in the work leading to the Joint Consensus Recommendations. TURN presented its alternative proposals many of which were	TURN Workshop Presentation Joint Consensus Recommendations and Discussion Summary Report (Sept. 9, 2014) (TURN was an active participant in formulating the consensus recommendations).	

adopted by the Commission.	

B. Duplication of Effort (§ 1801.3(f) and § 1802.5):

	Intervenor's Assertion	CPUC Discussion
a. Was the Office of Ratepayer Advocates (ORA) a party to the proceeding? ¹	Yes	Verified.
b. Were there other parties to the proceeding with positions similar to yours?	Yes	Verified.
c. If so, provide name of other parties: Center for Accessible T Greenlining Institute	Геchnology; The	Verified.
d. Intervenor's claim of non-duplication: While there was so positions advocated by other consumer intervenors, TURN develop its own proposals. TURN also worked closely with the Center for A Technology and The Greenlining Institute including writing and sulfilings and leading and drafting the Joint Consumers' efforts on the Decision. TURN also was in direct contact with ORA during the presupporting some of ORA's positions, but often taking positions different to avoid duplication and, to the extent that there was any overlap, T supplemented and complemented that of ORA and the other consumers.	Accessible bmitting joint Proposed coceeding ferent from ORA. Il reasonable steps URN's work	Verified.

PART III: REASONABLENESS OF REQUESTED COMPENSATION

A. General Claim of Reasonableness (§ 1801 and § 1806):

a. Intervenor's claim of cost reasonableness:	CPUC Discussion
There is no question that TURN made a substantial contribution to the outcome of this proceeding. TURN's recommendations were cited numerous times in D.15-07-007 (see above). In addition, TURN kept its costs reasonably low by focusing on a few major issues. Given the significance of the proceeding to the achievement of the Commission's and State of California's goals of bridging the digital divide and ensuring that citizens and organizations have affordable access to high-speed internet services, and the significance of TURN's participation, the Commission should find TURN's request for intervenor compensation to be reasonable.	Accepted.
b. Reasonableness of hours claimed: Mr. William R. Nusbaum was lead attorney on this case for TURN. When Ms. Leslie C. Mehta joined	See III.D., CPUC Disallowances and

¹ The Division of Ratepayer Advocates was renamed the Office of Ratepayer Advocates effective September 26, 2013, pursuant to Senate Bill No. 96 (Budget Act of 2013: public resources), which was approved by the Governor on September 26, 2013.

TURN in December 2013, as an attorney with substantial experience in complex litigation but new to public utility regulation, Mr. Nusbaum became her supervisor and mentor with the goal of bringing her existing talents to bear on regulatory issues such as those in this CTF proceeding. Her arrival shortly before Mr. Nusbaum's change to part-time status (as of July 1, 2014) allowed Mr. Nusbaum to turn over more responsibility for managing the case to Ms. Mehta shortly after her arrival. TURN worked to avoid or at least minimize any internal duplication. An exception occurred when both Mr. Nusbaum and Ms. Mehta attended one workshop together, in part to educate Ms. Mehta on the Commission's less formal workshop process and TURN's role in that process. Otherwise, each attorney was generally responsible for his or her individual issues. Over the period of Feb. 2014 through June 2014, Ms. Mehta's responsibilities increased while Mr. Nusbaum was mainly focused on supervising, reviewing drafts, etc.²

Adjustments.

Mr. Nusbaum devoted the equivalent of approximately three 40-hour work weeks to this proceeding, while Ms. Mehta devoted the equivalent of approximately five 40-hour work weeks. Given that Phases 1 and 2 of this proceeding lasted for over 2.5 years, TURN submits that this amount of time is very reasonable when considering the complexity of the issues addressed and TURN's substantial contributions.

c. Allocation of hours by issue:

TURN has allocated all of our attorney and advocate time by issue area or activity, as evident on our attached timesheets.

The following codes relate to specific substantive issue and activity areas addressed by TURN:

GP - General Preparation: time for activities necessary to participate in the Docket.

G- Issues associated with the restatement of the Commission's goals for the CTF program, including issues associated with the process laid out in the OIR for determining the goals.

E – Issues associated with eligibility requirements for CTF recipients, especially those associated with eligibility for CBOs.

S – Issues associated with how the CTF subsidy would be calculated,

TURN's claim shows the following allocation of hours by issue:

G	5.52%
E	21.67%
S	0.39%
W	21.28%
#	36.80%
GP	14.34%
	100.00%

² In early July 2014 Ms. Mehta was out for medical reasons and Mr. Nusbaum continued as lead attorney. Ms. Mehta assumed full responsibility for the proceeding in mid-July 2014 (and Mr. Nusbaum recorded no hours for this period) and retained that distinction until she had to take extended medical leave in Dec. 2014 at which time Mr. Nusbaum once again assumed full case responsibility. TURN was very diligent to avoid overlapping case coverage unless absolutely necessary

including budget and administrative issues

W- Issues associated with preparation and participation at workshops held in this proceeding, contributions to the consensus position and report, participation in consensus subcommittees and development of TURN's proposals presented at the workshops.

COMP – Preparation of compensation request and TURN's notice of intent.

- Where time entries cannot easily be identified with a specific activity code. For these entries, the allocation of time spent on activities can be broken down as such: G - 25%; E - 40%; S - 15%; W - 15%.

B. Specific Claim:*

CLAIMED						CPUC Aw	ARD	
	ATTORNEY, EXPERT, AND ADVOCATE FEES							
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate \$	Total \$
William R. Nusbaum	2013	61.75	\$455	D.13-10-065, Res.ALJ-287	28,096.25	61.75	\$455	\$28,096.25
William R. Nusbaum	2014	42.25	\$465	Res.ALJ-303	19,646.25	39.75	\$465	\$18,483.75
William R. Nusbaum	2015	13.00	\$465	Res.ALJ-303	6,045	13.0	\$465	\$6,045.00
Leslie C. Mehta	2014	200.25	\$310	See Comment 1	62,077.50	139.13	\$300	\$41,739.00
				,	Subtotal: \$115,865.00		Subto	tal: \$94,364.00
		INTERVE	NOR CC	MPENSATION (CLAIM PRE	PARATIO	V **	
Item	Year	Hours	Rate \$	Basis for Rate*	Total \$	Hours	Rate	Total \$
William R. Nusbaum	2013	1	\$227.5 0	Res.ALJ-287 (Half approved hourly rate)	227.50	1	227.50	\$227.50
William R. Nusbaum	2015	11	\$232.5 0	Res.ALJ-303 (Half approved hourly rate)	\$2,557.5 0	11	232.50	\$2,557.50
	Subtotal: \$2,785.00 Subtotal: \$2,785.00							

		COSTS		
#	Item	Detail	Amount	Amount
1	Photocopies	Materials related to proceeding	\$44.22	\$44.22
2	Postage	TURN pleadings	\$24.95	\$24.95
		TOTAL REQUEST: \$1	18,719.17	TOTAL AWARD: \$97,218.17

^{**}We remind all intervenors that Commission staff may audit their records related to the award and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. Intervenor's records should identify specific issues for which it seeks compensation, the actual time spent by each employee or consultant, the applicable hourly rates, fees paid to consultants and any other costs for which compensation was claimed. The records pertaining to an award of compensation shall be retained for at least three years from the date of the final decision making the award.

^{**}Travel and Reasonable Claim preparation time typically compensated at ½ of preparer's normal hourly rate

ATTORNEY INFORMATION				
Attorney	Date Admitted to CA BAR ³	Member Number	Actions Affecting Eligibility (Yes/No?) If "Yes", attach explanation	
William R. Nusbaum	June 7, 1983	108835	No	
Leslie C. Mehta	December 3, 2008	258512	No	

C. Comments on Part III

	Comment
Comment 1	Reasonableness of hourly rates: This is one of the first Requests for Compensation in which TURN seeks an hourly rate for substantive work performed by Ms. Mehta in 2014. TURN requests an hourly rate of \$310, which we submit is a reasonable rate for an attorney of her training and experience.
	Ms. Mehta is a 2002 graduate of Howard University School of Law and is a member of the California, Kansas, Missouri and Maryland bars. She graduated in the top 20% of her class and served on the Law Review and won a top merit scholarship for academic performance.
	After law school, Ms. Mehta taught high school and worked as a contract attorney. From 2005 to 2008, Ms. Mehta was an Associate at Husch Blackwell Sanders in Kansas City, MO. Ms. Mehta was lead associate on complex civil litigation including products liability, medical malpractice, election law and breach of contract. She also was a key attorney in a voter election case wherein she was responsible for conducting trial strategy as well as motion practice. From 2008 to 2010 she became an Associate at

 $^{^3}$ This information may be obtained through the State Bar of California's website at http://members.calbar.ca.gov/fal/MemberSearch/QuickSearch .

Shook, Hardy & Bacon in SF where she managed class action litigation. From 2010 to 2013 Ms. Mehta was an Associate at Rosen Bien Galvan & Grunfeld in SF where she worked on a variety of civil rights and class action cases including wrongful death, voting rights, police brutality, prisoner rights discrimination and harassment. In that capacity she became expert at taking depositions, motions for summary judgment, mediation and settlements.

In Dec. 2013 Ms. Mehta joined TURN as a Staff Attorney. TURN submits that the rate we are requesting for Ms. Mehta of \$310 is conservative but reasonable. Ms. Mehta joined TURN with significant experience in the type of complex litigation that is typical in a CPUC proceeding having devoted years to honing her discovery, case strategy, pleading writing and other litigation skills that are relevant to TURN's regulatory practice. While none of that experience was directly with public utility regulation, the quantity and quality of those experiences that enabled her to assume substantial responsibility for TURN's advocacy work in important proceedings such as this one, with a much shorter learning curve than a less-experienced attorney would have required.

At the start of 2014 Ms. Mehta had 9 years of attorney experience. The 2014 range for attorneys with 8-12 years of experience is \$320 – \$375 (Res. ALJ-303). TURN's request of \$310 is conservatively below that range. For comparison purposes, "close peers" of Ms. Mehta that have had rates recently set by the Commission include, Colin Bailey, Karen Ueda and Barbara Chisholm set in D.13-11-018. Like Ms. Mehta, each of those had extensive litigation experience, but no previous direct experience practicing before the CPUC. Mr. Bailey was a 2005 law graduate for whom the Commission approved a 2012 rate (when he would have had approximately 7 years of experience) of \$300. Ms. Ueda, a 2000 law graduate, had 11 years legal experience when she first began working on a proceeding before the Commission, and was authorized a rate of \$340. Ms. Chisholm graduated law school in 2001. In her eighth year of legal practice in 2009, the Commission set her rate at \$325. Given these comparable rates, the rate of \$310 for Ms. Mehta's work in 2014 is reasonable and should be granted by the Commission.

Comment 2

The timesheet entries reference Ana Montes, and Richard Chabran. These are TURN's experts on CTF and broadband. The only hours claimed for such purposes were for Mr. Nusbaum and Ms. Mehta's time. TURN is not including in this request any hours for Ms. Montes or Mr. Chabran.

D. CPUC Disallowances and Adjustments:

Item	Reason
Leslie Mehta's	TURN requests a 2014 hourly rate of \$310 for Mehta, based on her previous
Hourly Rate	experience as a contract attorney. At the time of the proceeding in 2014, Mehta

	had been licensed in California since December 2008, or five years. While Mehta has practiced as a lawyer since 2005 in other states, Mehta did not have previous experience before the Commission or in a utility or regulatory practice. We therefore set Mehta's rate at the bottom of the range of the 5-7 year experience level, at \$300 per hour.
Reduction for Inefficiency and	We reduce Mehta's claimed hours by 61.12 hours. We reduce excessive time spent reviewing filings and preparing/drafting documents.
Excessive Hours Claimed	From 2/19-3/7/14, Mehta requests 31 hours for the work on TURN's staff presentation at the CTF workshop. The amount of work claimed is excessive, and we allow six hours to prepare a seven page powerpoint and two-page summary.
	We also disallow 2.37 hours, half of Mehta's hours for the 3/10/14 CTF Workshop which both Mehta and Nusbaum attended; we also disallow 2.5 hours from Nusbaum's hours for the same reason.
	We disallow 2 hours of the 5.0 hours claimed on 2/10/14 for document. TURN requests 50 hours to prepare the Alternate Proposal in June 2014; we allow 20 hours for preparing the Alternate Proposal. On 7/31/14, we reduce Mehta's claim for 2.75 hours for a meeting by 1.75 hours.

PART IV: OPPOSITIONS AND COMMENTS

A. Opposition: Did any party oppose the Claim?	No.
B. Comment Period: Was the 30-day comment period waived (see Rule 14.6(c)(6))?	Yes.

FINDINGS OF FACT

- 1. The Utility Reform Network has made a substantial contribution to D.15-07-007.
- 2. The requested hourly rates for The Utility Reform Network's representatives, as adjusted herein, are comparable to market rates paid to experts and advocates having comparable training and experience and offering similar services.
- 3. The claimed costs and expenses, as adjusted herein, are reasonable and commensurate with the work performed.
- 4. The total of reasonable compensation is \$97,218.17.

4

CONCLUSION OF LAW

1. The Claim, with any adjustment set forth above, satisfies all requirements of Pub. Util. Code §§ 1801-1812.

ORDER

- 1. The Utility Reform Network shall be awarded \$97,218.17.
- 2. Within 30 days of the effective date of this decision, the Commission's Fiscal Office shall disburse the awarded compensation from the Commission's Intervenor Compensation Fund. Payment of the award shall include compound interest at the rate earned on prime, three-month non-financial commercial paper as reported in Federal Reserve Statistical Release H.15, beginning December 7, 2015, the 75th day after the filing of The Utility Reform Network's request, and continuing until full payment is made.
- 3. The comment period for today's decision is waived.

-	 		
Dated		_, at San Francisco,	California

This decision is effective today

APPENDIX

Compensation Decision Summary Information

Compensation Decision:		Modifies Decision?	No
Contribution Decision(s):	D1507007		
Proceeding(s):	R1301010		
Author:	ALJ Park		
Payer(s):	CPUC Intervenor Compensation Fund		

Intervenor Information

Intervenor	Claim Amount		Amount	Multiplier?	Reason	
	Date	Requested	Awarded		Change/Disallowance	
The Utility Reform	9/23/15	\$118,719.17	\$97,218.17	N/A	Reduction for Inefficiency	
Network					and Excessive Hours	
					Claimed; Hourly Rates	

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee	Year Hourly Fee	Hourly Fee
				Requested	Requested	Adopted
William	Nusbaum	Attorney	TURN	\$455	2013	\$455
William	Nusbaum	Attorney	TURN	\$465	2014	\$465
William	Nusbaum	Attorney	TURN	\$465	2015	\$465
Leslie	Mehta	Attorney	TURN	\$310	2014	\$300

(END OF APPENDIX)